

1 ANTHONY B. GORDON (S.B. NO. 108368)
2 GORDON & GORDON
3 A Professional Law Corporation
4 5550 Topanga Canyon Boulevard, Suite 200
5 Woodland Hills, California 91367-6478
6 Telephone: (818) 887-5155
7 Facsimile: (818) 887-5154

8 Attorneys for Defendants BLUE ROCK
9 CAPITAL, LTD., ESPRO INVESTMENTS,
10 LTD., and PRASANTH SEEVNARAYAN

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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

12 UNITED MEDICAL DEVICES, LLC,
13 a California limited liability company,
14 UNITED CONVENIENCE SUPPLY
15 LLC, a Delaware Limited Liability
16 Company,

17 Plaintiffs,

18 v.

19 BLUE ROCK CAPITAL, LTD., a
20 Mauritius Limited Liability Company;
21 ESPRO INVESTMENTS, LTD., a
22 Mauritius Limited Liability Company;
23 PRASANTH SEEVNARYAN, an
24 individual; and DOES 1-50,

25 Defendants.

Civil Action No. 2:16-cv-01255-PSG-SSx

**NOTICE OF MOTION AND MOTION
TO DISMISS COMPLAINT
PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE, RULE 12 (b)(6)**

**[MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS COMPLAINT
PURSUANT TO FRCP 12(b)(6) FILED
CONCURRENTLY HERewith]**

Date: April 18, 2016

Time: 1:30 p.m.

Ctrm: 880

Roybal Federal Building

Judge: Hon. Philip S. Gutierrez

23 TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

24 PLEASE TAKE NOTICE that on April 18, 2016, at 1:30 p.m., in Courtroom 880,
25 Edward R. Roybal Federal Building, 255 East Temple Street, Los Angeles, CA 90012-
26 3332, defendants BLUE ROCK CAPITAL, LTD., and ESPRO INVESTMENTS, LTD.,
27 will move this Court for an order dismissing Plaintiffs' complaint pursuant to Rule
28

1 12(b)(6) of the Federal Rules of Civil Procedure on the ground that it does not comply
2 with the provisions of Federal Rule of Civil Procedure 12(b)(6) in that it fails to state a
3 claim upon which relief may be granted as each purported claim lack essential elements
4 constituting a viable claim.

5 This motion is based on this Notice of Motion, the accompanying Memorandum of
6 Points and Authorities, and upon such other and further oral or documentary evidence as
7 may be presented at the hearing.

8 This motion is made following the conference of counsel pursuant to Local Rule 7-
9 3, which took place on February 25, 2016.

10 GORDON & GORDON
11 A Professional Law Corporation.

12 Dated: February 28, 2016

13 By:


14 ANTHONY B. GORDON
15 Attorney for BLUE ROCK CAPITAL,
16 LTD., ESPRO INVESTMENTS, LTD.,
17 and PRASANTH SEEVNARAYAN
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 5550 Topanga Canyon Boulevard, Suite 200, Woodland Hills, California 91367-6478.

On February 29, 2016, I served the foregoing documents described as:

**NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE, RULE 12 (b)(6)**

**[MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION
TO DISMISS COMPLAINT PURSUANT TO FRCP 12(b)(6) FILED
CONCURRENTLY HEREWITH]**

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Michael J. Perry, Esq.
4640 Admiralty Way, Suite 500
Marina del Rey, California 90292

Peter W. Ross
Brown George Ross LLP
2121 Avenue of the Stars, Suite 2400
Los Angeles, CA 90067

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Woodland Hills, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on February 29, 2016, at Woodland Hills, California

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.



Linda Gordon

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2 A Professional Law Corporation
5550 Topanga Canyon Boulevard, Suite 200
3 Woodland Hills, California 91367-6478
Telephone: (818) 887-5155
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6 LTD., and PRASANTH SEEVNARAYAN

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4 Witkin, Cal. Procedure (4 th ed. 1997) Pleading § 480, p. 573	2
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MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

This is the companion motion filed concurrently with defendant PRASANTH SEEVNARYAN's motion for orders quashing service of the summons and complaint on him, and to dismiss the summons and complaint for lack of personal jurisdiction. This motion attacks the sufficiency of the two separate claims for breach of a written Distribution Agreement that plaintiffs UNITED MEDICAL DEVICES, LLC ("UMD") and UNITED CONVENIENCE SUPPLY LLC, ("UCS") filed against defendants BLUE ROCK CAPITAL, LTD., ("BLUE ROCK"), ESPRO INVESTMENTS, LTD., ("ESPRO") and PRASANTH SEEVNARAYAN ("SEEVNARAYAN"). Significantly, the plaintiffs have studiously avoided attaching a copy of the Distribution Agreement to the complaint, and by this motion, the moving parties BLUE ROCK and ESPRO move to dismiss the complaint under Federal Rule of Civil Procedure, Rule 12(b)(6) for failing to state viable claims upon which relief can be granted.

II. PLAINTIFFS FAIL TO STATE A CLAIM FOR BREACH OF CONTRACT

1. Legal Standard under Federal Rules of Civil Procedure Rule 12(b)(6)

The federal pleading standards for notice pleading contained in the Federal Rules of Civil Procedure "are not so liberal as to allow purely conclusory statements to suffice to state a claim that can survive a motion to dismiss under Rule 12(b)(6). '[T]he court is not required to accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the fact alleged. *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994.)

Dismissal is appropriate under Rule 12(b)(6) where a plaintiff fails to allege sufficient facts under a cognizable legal theory. "A claim for breach of contract must include facts demonstrating (1) that a contract exists between the parties; (2) that the plaintiff performed his contractual duties or was excused from non-performance; (3) that

1 the defendant breached those contractual duties; and (4) that plaintiff's damages were a
 2 result of the breach. [Citation omitted.] *Walters v. Fidelity Mortgage of CA.*, 30
 3 F.Supp.2d. 1185. 1198 (E.D. Cal. 2010.)

4 “A written contract may be pleaded either by its terms – set out verbatim in the
 5 complaint or a copy of the contract attached to the complaint and incorporated therein by
 6 reference or by its legal effect.” *Smith v. U.S. Bank*, 2012 WL 10634241 (C.D. Cal.
 7 2012; “In order to plead a contract by its legal effect, plaintiff must allege substance of
 8 its relevant terms, which is more difficult because the plaintiff must engage in careful
 9 analysis of the instrument, comprehensiveness in statement, and avoidance of legal
 10 conclusions.’ *Id.* (quoting 4 Witkin, Cal. Procedure (4th ed. 1997) Pleading § 480, p.
 11 573.)” *McKell v. Washington Mut., Inc.*, 142 Cal.App.4th 1457, 1489 (2006.)

12 **2. Plaintiffs Have Failed to Plead Facts That Support Viable Claims For** 13 **Breach of Written Contract**

14 Plaintiffs generally allege that all defendants signed and entered into the
 15 Distribution Agreement. See Complaint ¶ 15 [“Plaintiffs on the one hand and defendants
 16 on the other signed a written ten year distribution agreement...”]. But the Complaint does
 17 *not specifically identify which defendants were parties to the Distribution Agreement.*
 18 Nor does it allege specifically which terms of the written agreement were breached, and in
 19 what way.

20 **3. Plaintiffs’ Complaint Should Be Dismissed Because it Fails to Identify** 21 **Which Defendants Were Parties to the Contract**

22 The first element of a breach of contract claim is that a contract exists between the
 23 parties. *Walters v. Fidelity Mortgage of CA.*, 730 F.Supp.2d. 1185. 1198 (E.D. Cal.
 24 2010). The Complaint is intentionally vague in that it fails to identify which of the
 25 defendants were parties to the written Distribution Agreement. While plaintiffs attempt to
 26 entangle defendant SEEVNARYAN as a party to the Distribution Agreement, the
 27 complaint lacks any specific allegation that he was a party to the Distribution Agreement.

28 Plaintiffs also do not identify the specific terms of the agreement that they contend

1 defendants breached, other than to state that “Defendants breached the Distribution
2 Agreement as set forth in paragraph 16 above.” See Complaint, ¶ 29.

3 Paragraph 16 alleges no more than that “[t]he Distribution Agreement contains the
4 representations, conditions, and promises by defendants that they will, among other
5 things: Have minimum net sales of US \$500,000 of Playboy Condoms in India per year;
6 Purchase a minimum of US \$1,000,000 of Playboy Vapor from UCS for India per year;
7 Purchase a minimum of US \$1,200,000 of Playboy Vapor from UCS for Africa per year;
8 Purchase a minimum of 2 containers of Playboy Lubricants for Africa per year.” See
9 Complaint, ¶ 16.

10 The Complaint fails not only to identify the specific provisions of the Distribution
11 Agreement which defendants allegedly breached, but it also fails to include the express
12 language of the Distribution Agreement. The extent of plaintiffs’ factual allegations is that
13 defendants allegedly failed to satisfy certain “*representations, conditions and promises*”
14 that are not factually supported by the exact wording of the Distribution Agreement. See
15 Complaint ¶17. [“Defendants breached the Distribution Agreement by failing to satisfy
16 the conditions set forth in Paragraph 16 of this Complaint.”].

17 Because plaintiffs do not provide sufficient facts showing in what way each of the
18 defendants breached a specific term of the written the Distribution Agreement, the
19 Complaint does not state a claim for breach of contract. *Perez v. Wells Fargo Bank, N.A.*,
20 No. C-11-02279 JCS, 2011 WL 3809808, at *18 (N.D. Cal. Aug. 29, 2011) [dismissing
21 contract claim where the plaintiff failed to identify a “specific contractual provision
22 allegedly breached”]; *McAfee v. Francis*, No. 5:11-cv-00821-LHK, 2011 WL 3293759, at
23 *2 (N.D. Cal. Aug. 1, 2011) [“Without the essential terms of the agreement and more
24 specific allegations as to the breach, plaintiffs fail to state breach of contract claims.”].

25 Accordingly, plaintiffs have not pleaded facts that show how or in what way BLUE
26 ROCK and ESPRO breached the express terms of the Distribution Agreement.

1 **4. Pleading a Breach of Contract Cause of Action Requires an Attached**
 2 **Contract or Verbatim Terms**

3 In an absence of pleading the terms of the written agreement verbatim, the
 4 plaintiffs are required to attach what they allege to be their contract with defendants.
 5 Instead of doing either, they attempt to cobble together alleged “*representations,*
 6 *conditions and promises*” in an attempt to avoid providing the express terms of the
 7 Distribution Agreement, which leaves it to the defendants to speculate as to what duties
 8 each defendant allegedly owed under the contract. Because the Complaint does not
 9 clearly allege the substance of the relevant terms of the Distribution Agreement,
 10 defendants do not have reasonable notice of the claims against them, and the Complaint
 11 fails to state a claim for breach of contract.

12 **III. PLAINTIFFS’ ALTER-EGO THEORY LACKS SPECIFIC**
 13 **ALLEGATIONS**

14 “The term ‘alter ego’ refers to a doctrine of corporation law under which courts
 15 may at times disregard the corporate entities. If plaintiffs wish to pursue such a theory of
 16 liability, they must allege the elements of the doctrine. Conclusory allegations of alter
 17 ego status such as those made in the present complaint are not sufficient.” *Hokama v.*
 18 *E.F. Hutton & Co., Inc.*, 556 F. Supp. 636, 647 (C.D. Cal. 1983.) “Rather a plaintiff
 19 must allege specifically both of the elements of alter ego liability, as well as facts
 20 supporting each.” *Neilson v. Union Bank of Cal., N.A.*, 290 F. Supp. 2d 1101, 1116
 21 (C.D. Cal. 2003.)

22 Relying on exactly the sort of conclusory allegations that these cases found to be
 23 deficient, plaintiffs allege that defendant BLUE ROCK, ESPRO, and SEEVNARYAN
 24 are all alter-egos of one another. See Complaint. ¶ 12, which provides:

25 “Defendants are the alter egos of each other and/or are liable to plaintiffs under the
 26 single enterprise doctrine. The companies are participating in a common business
 27 venture. The companies sell the same products. The companies have common
 28 owners and employees. The companies share business locations, telephone numbers,

1 a website and email systems. Each company is merely the instrumentality, agency,
 2 conduit or adjunct of the others. There is such a unity of interest and ownership
 3 between the defendant companies and their individual defendants that their separate
 4 personalities have ceased to exist. Further Plaintiffs are informed and believe and
 5 thereon allege that, if the acts of any one of the companies are treated as those of that
 6 company alone, an inequitable result will follow.”

7 These above allegations do not meet the pleading requirements for alter ego
 8 liability. Each of these “legal conclusions” is unsupported by the “evidentiary”
 9 allegations required to sustain such a claim. Furthermore, as stated in *Sandoval v. Ali*, 34
 10 F.Supp.3d 1031, 1040 (N.D. Cal. 2014), “California courts have rejected, however, the
 11 view that the potential difficulty a plaintiff faces collecting a judgment is an inequitable
 12 result that warrants application of the alter ego doctrine. *Neilson*, 290 F.Supp.2d 1101 at
 13 1117; see also *Sonora Diamond Corp. v. Sup.Ct.*, 83 Cal.App.4th 523, 539 (2000) (‘The
 14 alter ego doctrine does not guard every unsatisfied creditor of a corporation but instead
 15 affords protection where some conduct amounting to bad faith makes it inequitable for the
 16 corporate owner to hide behind the corporate form. Difficulty in enforcing a judgment or
 17 collecting a debt does not satisfy this standard.’)”

18 Plaintiffs’ allegations of bad faith on defendants’ part is vague and conclusory,
 19 unsupported by specific facts, and is implausible on its face. Plaintiffs allege that
 20 defendants used “limited company forms for their own personal benefit and to avoid
 21 creditors and personal liability for their own wrongdoings.” See Complaint, ¶ 8. There are
 22 no specific allegations of this ever occurring, and the Complaint fails to identify any
 23 purportedly unsatisfied creditors. It also fails to allege which subsidiaries plaintiffs claim
 24 engaged in wrongdoings. Instead, plaintiff pleads conclusions without any supporting
 25 factual details as required by Rule 8 of the Rules of Federal Civil Procedure.

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1 **IV. CONCLUSION**

2 For the reasons stated above, defendants BLUE ROCK and ESPRO respectfully
3 request that the Court dismiss the stated claims in the Complaint for failure to state a
4 claim upon which relief may be granted.

5
6 GORDON & GORDON
Professional Law Corporation.

7
8 Dated: February 29, 2016

9 By:



10 ANTHONY B. GORDON
11 Attorney for BLUE ROCK CAPITAL,
12 LTD., ESPRO INVESTMENTS, LTD.,
13 and PRASANTH SEEVNARAYAN
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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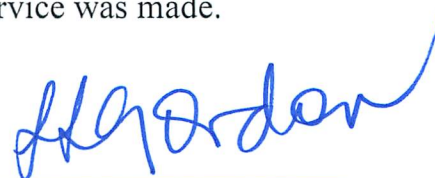
Michael J. Perry, Esq.
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Peter W. Ross
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Executed on February 29, 2016, at Woodland Hills, California

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.



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